

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

STATE OF OHIO, ex rel.
MICHAEL DeWINE,
OHIO ATTORNEY GENERAL,
Plaintiff,

Civil Action No. 1:13-cv-343
Bertelsman, J.
Litkovitz, M.J.

vs.

JENNY LEE FORD, et al.,
Defendants.

**REPORT AND
RECOMMENDATION**

This matter is before the Court on plaintiff's motions for default judgment against defendants Jenny Lee Ford and James Robert Ford and supporting affidavits (Docs. 11, 12), plaintiff's supplemental affidavit in support of the motions (Doc. 16), and plaintiff's post-hearing brief (Doc. 17). An evidentiary hearing on the motions was held on March 11, 2014.¹ (Doc. 15).

The Court has carefully considered the evidence presented at the evidentiary hearing and plaintiff's documentation setting forth its damages and penalty calculations. For the reasons stated by the Court on the record at the hearing and by plaintiff in its post-hearing brief, the Court finds by a preponderance of the evidence that plaintiff is entitled to default judgment pursuant to Fed. R. Civ. P. 55(b) for the full monetary and injunctive relief sought. (*See* plaintiff's Proposed Order, Doc. 17-2). Default judgment should therefore be entered against defendants and in favor of plaintiff for the full relief sought.

¹Defendants Jenny Lee Ford and James Robert Ford did not appear at the hearing.

IT IS THEREFORE RECOMMENDED:

- I. Plaintiff's motions for default judgment (Docs. 11, 12) should be **GRANTED**.
- II. Default judgment should be entered in favor of plaintiff and against defendants Jenny Lee Ford and James Robert Ford as follows:

1. Pursuant to 42 U.S.C. § 9607, Defendants Jenny Lee Ford and James Robert Ford, jointly and severally, are ordered to pay Plaintiff, State of Ohio, response costs which the State has incurred from January 29, 1996 through May 28, 2008, in the amount of \$441,838.30, plus interest on this amount at the legal rate until this judgment amount is satisfied.

2. Pursuant to Ohio Rev. Code § 3734.20(B) and Ohio Rev. Code § 3745.12, Defendants Jenny Lee Ford and James Robert Ford, jointly and severally, are ordered and enjoined to pay Plaintiff, State of Ohio, additional response costs for investigation and the remedial measures that have been performed by Ohio EPA and its contractors from May 29, 2008 through January 15, 2011, for Ohio EPA's implementation of the work required by the April 6, 2007 Director's Final Findings and Orders in the amount of \$29,468.87, plus interest on this amount at the legal rate until this judgment amount is satisfied.

3. The response cost payments and interest ordered by paragraphs 1. and 2. shall be made by delivering to Plaintiff, c/o Scott Hainer, Paralegal, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, cashier's or certified checks payable to the order of "Treasurer, State of Ohio."

4. Pursuant to Ohio Rev. Code § 6111.07(B), Ohio Rev. Code § 3734.10, Ohio Rev. Code § 3734.13(C), Ohio Rev. Code § 3734.20, and Ohio Rev. Code §§ 3767.02-3767.06, Defendants Jenny Lee Ford and James Robert Ford, jointly and severally, are ordered and enjoined to perform additional remediation work to address the ground water contamination that continues to be a threat to the Coal Grove Wellfield. To implement this remediation, Defendants are ordered to hire an environmental consultant to prepare a remediation plan for further cleanup of the contamination in the ground water that has migrated from the Tri-State Tank Cleaning facility, located at 410 Riverside Drive, Coal Grove, Ohio, also known as the Ford Bros. Site. The remediation plan shall be submitted to Ohio EPA for approval. When the

remediation plan is approved by Ohio EPA, Defendants shall implement the plan as approved by Ohio EPA. Defendants are also ordered to pay Ohio EPA its response costs for reviewing the plan, overseeing the work, and other related costs, such as contractor and laboratory costs. Ohio EPA shall submit to Defendants invoices for these future response costs.

5. The remediation plan required to be submitted by paragraph 4. shall be submitted to Ohio EPA at the following address:

Ohio EPA Southeast District Office
Division of Environmental Response and Revitalization
Attn. Site Coordinator, Tri-State Tank Cleaning Site
2195 Front Street
Logan, Ohio 43138

6. Pursuant to Ohio Rev. Code §§ 3734.13(C) and 6111.09(A), Defendants Jenny Lee Ford and James Robert Ford, jointly and severally, are ordered and enjoined to pay into the Treasury of the State of Ohio a civil penalty for violations of Ohio Rev. Code §§ 3734.11(A) and 6111.07(A) in the amount of \$250,000 plus interest on this judgment amount at the legal rate until this judgment is satisfied. This civil penalty payment and interest shall be paid in the same manner and at the same address set forth in paragraph 3.

7. Defendants Jenny Lee Ford and James Robert Ford are ordered and enjoined from violating Ohio Rev. Code Chapter 3734 and Ohio Rev. Code Chapter 6111, the rules promulgated under those Chapters, and any Orders issued by the Director to the Defendants.

8. Defendants Jenny Lee Ford and James Robert Ford and their agents, representatives, employees, successors, or assigns, under the names that they presently use or any other names they use through any corporate or other device, and those acting in concert and participation with Defendants directly or indirectly, are ordered and enjoined from engaging in the acts or practices of which the State complains in the Complaint.

Date: April 23, 2014

s/ Karen L. Litkovitz
Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).